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Ontario's involvement in international human rights has evolved in large part as a result of Canada's unique federal structure. Under the *Canadian Constitution*, the ratification of international human rights treaties is the responsibility of the federal government, but their implementation becomes the shared responsibility of the federal government, provincial governments and, pursuant to a delegation of powers by Parliament, the two territorial governments—13 governments in all. The allocation of this responsibility corresponds to the division of powers set out in the Constitution. For example, where an international treaty that Canada has signed imposes obligations in the provincial fields of health or education, it becomes the responsibility of the provinces to implement those obligations.

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Ontario's Role in International Human Rights

by Thea Herman

Under Canadian law, international treaty obligations are not automatically incorporated into domestic law, as they are in some countries. Thus, it is up to each province, territory and the federal government to be aware of and comply with these obligations.

The international human rights treaties to which Canada is a signatory are numerous. Of particular note, in addition to the Universal Declaration of Human Rights, are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (often referred to as CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW).

The terms of these two Conventions and two Covenants require that Canada, as a State Party, submit periodic reports to the United Nations on the measures that have been adopted to give effect to the rights recognized within them. The report preparation process provides an excel-

lent opportunity to familiarize officials within the Ontario government with our treaty obligations since ministries and agencies are requested to provide information about compliance within their respective fields of responsibility.

The most recent human rights treaty to apply in Canada is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Canada ratified in June of this year (becoming the 21st country to do so) after extensive consultation with the provinces.

As Canadians, we are, of course, quite familiar with this concept of a federal-provincial division of powers. In the international arena, however, our federal arrangements are viewed, at best, as unique and, at worst, as unnecessarily complicated. Canada's reports to the United Nations are famous for their bulk, containing, as they do, separate reports from our federal, provincial and territorial jurisdictions.

The practical difficulties presented by the fact that one government

has the authority to enter into treaties and 13 governments have to implement them were addressed in 1975, when the federal and provincial Ministers Responsible for Human Rights met and established the Continuing Federal Provincial-Territorial Committee of Officials Responsible for Human Rights.

The committee, with official representatives from each of the 13 jurisdictions, meets twice annually. It facilitates the discussion of human rights issues, the ratification of new treaties and the preparation of Canada's reports under the various treaties. It has established a mechanism for dealing with complaints against Canada under the Covenant on Civil and Political Rights.

A working group of the committee has the task of developing a Canadian position to be put forward at the meetings of the UN Commission on Human Rights Working Group on the Draft Convention on the Rights of the Child. The participation of the provinces

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Introducing our new ministry

The Ontario Human Rights Commission has been moved from the Ministry of Labour to the recently constituted Ministry of Citizenship. The mandate of the ministry includes the encouragement of full, equal and responsible citizenship through programs that emphasize the participation of Ontarians as equal members of the community.

The Honourable Gerry Phillips is the Minister of Citizenship responsible for Race Relations and the Ontario Human Rights Commission. Active in community and public life for 20 years, Mr. Phillips was the former chairman of the board of governors, Scarborough General Hospital and has served as chair-

man of the Scarborough Board of Education and the Metropolitan Toronto School Board. Mr. Phillips was also chairman of Canadian Marketing Associates, Canada's largest management consulting firm specializing in marketing. Asked by a reporter, on the day he was sworn in, to define his area of responsibility, he replied: 'My major responsibility is to help fulfil an important promise of Premier David Peterson. That is to ensure that everyone in the province has equality of opportunity.'

The first deputy minister of the new Ministry of Citizenship is Maureen O'Neil. From 1978 to 1986, Ms. O'Neil was deputy head



of Status of Women Canada, during which time she was a Canadian delegate to the United Nations Commission on the Status of Women. She also managed the Canadian delegation to the 1985



UN Conference on the Status of Women. Ms. O'Neil more recently came from the Canadian Human Rights Commission, where she held the position of Secretary General and Chief Operating Officer.

Ontario's role continued from page 1

in this exercise of creating human rights standards is important in that many of the laws that will be potentially affected are provincial and much of the expertise in this area resides at the provincial level. For the last three years the chair of the Federal-Provincial-Territorial Working Group, Allan Shipley, from Ontario, has been a very active participant in Geneva at the meetings of the UN Working Group, and Canada's contribution to the task has been significant.

The provincial presence is felt, as well, at the UN Commission on Human Rights as each year the Canadian delegation includes at least one provincial representative. So, too, each time Canada presents one of its reports to the United Nations on the implementation of a particular human rights convention or covenant, at least one provincial representative is part of the delegation.

Closer to home, we reap the benefit of these international agreements on the domestic front. Although international treaty obligations do not automatically become part of our laws, courts have held that the *Canadian Charter of Rights and Freedoms* should be interpreted in light of our international obligations. In numerous Charter cases, courts have used various provisions of international law to interpret analogous provisions of the Charter. Indeed, the Charter's language borrows generously from these international documents.

Across the country we join in the annual celebrations of International Human Rights Day, recognizing the universality of human rights, while, in our own *Human Rights Code*, we derive continual inspiration from the words of the Universal Declaration of Human Rights:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations
(Preamble to the Ontario Human Rights Code)

Thea Herman is Manager, Equality Rights Branch, Ministry of the Attorney General.

Louis Lenkinski appointed as new editor

Louis Lenkinski is well equipped for his new position as editor of *Affirmation*. Mr. Lenkinski was a human rights advocate before and after the formation of the Human Rights Commission. In 1975 he was executive assistant to the Ontario Federation of Labour and in 1984 he was appointed to the Ontario Labour Relations Board. Mr. Lenkinski is actively involved with the United Way and is currently vice-chairman of the Canadian Jewish Congress.

We extend a warm welcome to our new editor and look forward to working with him.

Canon Borden Purcell

by R.G.L. Fairweather

First, there is the face, open, warm and sympathetic, as befits a concerned and compassionate person. Then there is the energy—bubbling, enthusiastic and seemingly indefatigable. Next comes a powerful commitment to the advancement of human rights both within his beloved Ontario and across Canada and also wherever people are suffering throughout the world. These and so many other good things form part of the character and personality of the retiring chairman of the Ontario Human Rights Commission, Canon Borden Purcell (as I write the word 'retiring' I realize it is a most inapt word to describe anything involving the redoubtable Canon).

He has served the commission and, through it, the people of Ontario for 10 years, first as a member and then for the past six years as chairman.

These years have been marked by major amendments to the commission's legislative mandate, including greatly expanded protection for people with physical and mental handicaps and for homosexuals. I am satisfied that his strong and unwavering support of these amendments helped during the debate in the legislature. MPPs who were subjected to a vicious barrage of criticism remain steadfast to the real issue under discussion—that of ameliorating discrimination.

His official biography is replete with dates and with facts about Borden Purcell, yet his colleagues and friends do not require any additional evidence upon which to judge his contribution to the cause of equality of opportunity. It has been my privilege, shared by many other people, to have counted him as a friend and ally as we pursued this common cause.

Action Travail des Femmes v. CNR

by Judith Falkner

On June 25, 1987, the Supreme Court of Canada rendered a unanimous decision upholding affirmative action programs as a means of destroying past patterns of discrimination and ensuring that future applicants and workers are not met with the same barriers. The issue before the Supreme Court was whether a human rights tribunal had the power to impose an affirmative action plan to address the problem of 'systemic discrimination' against a disadvantaged group—in this case, women.

The Canadian Human Rights Tribunal found that recruitment, hiring and promotion policies at CN prevented and discouraged women from working in blue collar jobs. An order that CN cease these activities, set a goal of 13 per cent female participation in the targeted job positions (the proportion of women in similar jobs across the country at that time) and hire at least one woman to fill every four job openings until this goal was reached was struck down by the Federal Court of Appeal. The Federal Court claimed that such an order was remedial rather than preventative and therefore not allowed under the provisions of the Act.

In reversing the decision of the Federal Court, Chief Justice Brian Dickson addressed the Federal Court's restrictive interpretation of the Act's remedial provisions by stating that although provisions of the Act must be given their plain meaning, it is equally important that the rights enunciated be given full recognition and effect. 'We should not search for ways and means to minimize those rights and to enfeeble their proper impact.'

Citing the federal *Interpretation Act*, the Supreme Court held that statutes including human rights legislation are deemed to be remedial and therefore should be given a fair, large and liberal interpretation that will best ensure that their objects are attained.

In discussing the need for affirmative action programs to deal with problems of systemic discrimination, the Court stated that:

...in attempting to combat systemic discrimination, it is essential to look to the past patterns of discrimination and to destroy those patterns in order to prevent the same type of discrimination in the future.

The case is of critical importance to human rights law in Canada as it establishes beyond a doubt that systemic discrimination will not be tolerated and that the remedy for such a problem may include the imposition of affirmative action programs.

There are several provisions contained in the Ontario Code that touch upon the problem of systemic discrimination. These include provisions for special programs (s.13), specific reference to the function of the commission [s.28 (c)], and the broad language utilized in the remedial power granted to boards of inquiry (s.40). This decision by the Supreme Court of Canada ensures that these provisions will be given a broad and liberal interpretation so that the rights contained in the Code will be given full effect.

Judith Falkner serves as legal counsel with the Ontario Human Rights Commission.

Race a factor in denying advancement

Rabindranath Rampersad is black. Originally from Trinidad, his ethnic origin is East Indian. Mr. Rampersad was discriminated against in his employment on the basis of his race, colour, ancestry, place of origin and ethnic origin when his employer hired less competent white individuals for a supervisory position without giving either Mr. Rampersad or another black co-worker an opportunity to fill the position.

Mr. Rampersad worked in auto body repair, prepping and painting cars. He had experience in both areas with previous employers as well as with the respondent employer. Despite this experience and his unquestioned competence, the company saw fit to hire less competent white individuals and put them in charge of the painters, including Mr. Rampersad.

While finding no discriminatory intent on the part of the company's owner, the board of inquiry found that the foreman, as the employment gatekeeper, had discriminated against Mr. Rampersad in unjustifiably hiring less qualified white individuals and putting them in charge of the painters.

By not giving better qualified black painters an opportunity, the board inferred from the evidence that the foreman's view of blacks and his discomfort in working with them led to the complainant's exclusion based on improper and unlawful considerations.

Bloopers

A commission officer was giving a workshop on sexual harassment to a group of supervisory engineers employed at a major petrochemical company.

After viewing a video illustrating typical scenarios, the officer generated discussion by asking the participants to make suggestions on how the female victims might deal with the male harassers. Initially reluctant, a few of them raised a number of sound alternatives. One scenario dealt with the display of a distasteful and pornographic calendar in a communal lunchroom.

A participant suggested that the female workers retaliate by pinning up male centrefolds. Unwittingly, the officer, a woman, replied... 'So you are suggesting a tit-for-tat strategy?' Immediately everyone broke into laughter. The officer seized the moment: she led an animated discussion on language and sexism, which underpins workplace harassment.

The amused and confused learned from each other!

Universal Declaration of Human Rights

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly proclaims

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. 1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. 1) Everyone has the right to freedom of movement and residence within the borders of each state.

2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. 1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. 1) Everyone has the right to a nationality.

2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. 1) Men and women of full age, without any limitation due

to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2) Marriage shall be entered into only with the free and full consent of the intending spouses.

3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. 1) Everyone has the right to own property alone as well as in association with others.

2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. 1) Everyone has the right to freedom of peaceful assembly and association.

2) No one may be compelled to belong to an association.

Article 21. 1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2) Everyone has the right of equal access to public service in his country.

3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. 1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2) Everyone, without any discrimination, has the right to equal pay for equal work.

3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. 1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. 1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. 1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. 1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3) These rights and freedoms may in no case be exercised contrary to the purpose and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Reflections on torture point way to New Year's resolution

by Michele Landsberg

There is a moment in that brilliant movie, *The Official Story*, when the whole audience gasps aloud. Alicia, the dutiful upper-class wife of an Argentine junta member, has grown more and more suspicious about her adorable, adopted 5-year-old daughter, Gaby. Could Gaby be the kidnapped infant of one of the 'disappeared?' Her husband, Roberto, the top military adviser par excellence—impatient, glib, tightly controlled—refuses to answer. She probes, presses, starts to make secret investigations. And in a climactic moment when she confronts her husband, the mask of the torturer slips from him. Enraged, he slams her head against the wall and then deliberately crushes her fingers in a door.

This brief scene is all the more horrifying because the domestic lives of Alicia and Roberto have been shown in such silken detail: the tasteful clutter of luxurious art objects, the bright shawl carelessly tossed on a soft couch, the glow of elegant dinner parties.

After the movie, we stepped out into the blaze of New York's Fifth Avenue, spangled with fairy lights for the holiday season. At Christmas and New Year's, Manhattan glitters like an Aladdin's cave of treasures; the crowds are rosy with an air of well-being. You'd have to be numb, or a saint, not to be seduced and elated.

Maybe it's churlish of me, in such an atmosphere, to greet the New Year by worrying about torture. Here comes 1986, and I've never been happier in my life, and yet... All around the world, well on its way to the twenty-first century, torturers no different from those

of the Spanish Inquisition are practising their trade.

They manage it, say the experts, by a process called 'doubling'. At work, they coldly apply pain and horror to the bodies and minds of other human beings. Then they drive home to eat, watch TV and play with the kids. They are able to keep up this separation of selves because their neighbours, friends and newspapers remain silent, tacitly approving of their work; because they are well-trained by their employers; because their religious or political beliefs are rigid enough to divide humanity into 'them' and 'us', the torturers and the rightfully tortured, the children at home who deserve love and vitamins and the children of the tortured who deserve abandonment or death.

We all, in our small, private way, practise the same sort of doubling. Canada trades with governments that torture; we sell them nuclear reactors, hold conferences with them, shake hands and smile for the cameras. At diplomatic dinner parties, I have had animated conversations about poetry with gentlemen who represent countries where people are legally maimed and flogged. Canadian tourists bask on the sunny beaches of countries where, perhaps a few blocks away, prisoners are chained and beaten in dark cells.

Every now and then, our protective bubble is pierced. Just two weeks before Christmas, the *Globe* reported that Beatriz Eugenia Barrios Marroquin, aged 26, mother of two, was kidnapped, apparently by a right-wing Guatemalan death squad, on the eve of her hasty departure to Canada. Three days

later, her body was found on an isolated road. Her hands had been cut off. Her face was disfigured.

At about the same time, we received (amidst a heap of beautiful Christmas cards) our December 'Torture File' newsletter from Amnesty International, with stories from Morocco, Honduras and Togo. We read how Moroccan torturers, like others, have pet names for their methods and instruments: 'l'avion' (suspension from iron bars with hands and legs tied behind the back) and 'le perroquet,' the parrot (the same thing, with hands and legs tied in front). No pet names were listed for choking people with excrement-soaked rags or asphyxiation in buckets of dirty water.

In Syria, official torturers favor the 'black slave,' a heated skewer inserted in the victim's anus. A similar method was used on a Moroccan woman student. In the newsletter, she tells how she was undressed, spread-eagled, and tortured with leather whips and the prod. She speaks of the humiliation of nakedness and the sleeplessness, fear and illness she suffers now.

I can't read about such intimate cruelty without cold fingers and toes and a quiver of sick horror. Nor, I imagine, can you. How can more than one-third of the world's governments calmly use these methods to repress dissent? This is, after all, the brink of 1986, not 1386. We like to believe that the human soul has made some progress.

And perhaps it has. We may not rush into the streets to agitate against Mozambique and Chile,

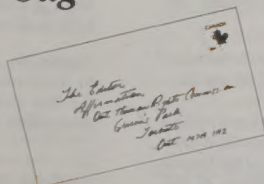
but, on the other hand, very few of us would shrug off the torture death of Beatriz Marroquin as none of our concern. Too many of us have learned the lesson of the twentieth century: if you choose not to know about the evil done by governments, you are complicit.

If you choose to know, no matter how uncomfortable it makes you, you can act. Thousands of Amnesty International volunteers, for example, patiently write letters on behalf of individual prisoners of conscience in 98 countries, and they have saved thousands from torture or death. Amnesty's idea is simple. Doggedly, it investigates cases, one by one, of disappearances, illegal detention, torture and execution. The minute it hears of someone seized, held and in danger of torture because of political beliefs, it puts pressure on the offending government, left or right. It does not always succeed—it did not manage to persuade officials to whisk Beatriz Marroquin out of Guatemala before she could be murdered—but it does not give up or fall silent.

It feels like centuries since I last made any New Year's resolutions, but this year, I am not going to be among those who remain silent out of apathy or neglect. This year, I'm finally sending off my membership to Amnesty International. If you are similarly moved, you may want to do the same.

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Mail bag



Dear Sir:

Please permit me to express my disappointment after reading the article captioned 'The Labour Movement—in the Struggle Against Racism and Discrimination' printed in your September 1987 issue of *Affirmation*.

It is regrettable that most of the pioneers were forgotten and their contributions overlooked. For instance, Kalman Kaplansky, of the Jewish Labour Committee was the first Canadian to travel across this country recruiting trade unionists in the fight for human rights. The names Eamon Park, Chairman, Toronto and District Labour Committee for Fair Practices, Gordon Milling, the first secretary, Dennis McDermott, former president of

the Canadian Labour Congress, also a member of the committee and chairman of Local 439, UAW's Fair Practices Committee, the only active local union committee in Ontario in the late forties, were in the forefront.

Eamon Park headed labour delegations to Queen's Park in 1949 and March 1950, and Leslie Frost, who was then premier, showed his willingness to identify with the issue of discrimination addressed by labour and later in 1950 enacted the Fair Employment Practices Act, which prohibited racial and religious discrimination by employers or labour unions. Also, in 1951 the Female Employees Fair Remuneration Act, which required equal pay for women who performed the same work as men in the same establishment, was enacted.

Kaplansky, Park, Milling and McDermott were later joined by Donna Hill, Sid Blum and George McCurdy, secretary of the Carpenters' Union, who later

became executive director of the Nova Scotia Human Rights Commission. Others were Dr. Harold Johnson, Alex Maxwell and Lyle Talbot of the U.A.W. in Windsor, Ontario. These are the pioneers in Labour's struggle against racism and discrimination. They fought indefatigably to push Ontario ahead of all the other provinces, and the federal government, for the enactment of human rights legislation, which led to the Human Rights Code of 1962.

For the record, the pioneers in Labour's contribution should not be forgotten.

Yours truly,

Bromley L. Armstrong
Former Ontario Human Rights Commissioner

Letters invited

We welcome your reaction to *Affirmation*. Write us—we are looking for your participation.

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Editorial

Bystanders are not innocent

The history of the human race is replete with events and incidents of its brutality and inhumanity.

Yesterday it was slavery, colonization, bigotry co-existing with subjugation, the wholesale slaughter of native people and the horror of the holocaust.

Today, racism continues in violent outbreaks of racial tension, religious intolerance, sexism, inequality and brutal suppression of political opposition all over the globe.

While we must persist in our efforts as a nation to make Canada a more tolerant, a more decent and fairer society, we must not be diverted from assuming the same tasks in the global arena.

Our past experiences have taught us that we cannot afford the luxury of taking on the role of innocent bystanders in the face of brutal indignities or blatant violations of human rights.

For this reason, we note with

great interest a report of a special House of Commons committee, here in Canada, promising to place a 'top priority' designation on human rights violations committed in any country applying for foreign aid.

The government's response to this report is very gratifying. For the first time in our history, discriminatory policies and practices will be taken into account by Canada in determining eligibility for aid.

The committee urged the development of a 'report card' on human rights around the world to be used for this purpose. The report points the way to a very constructive effort to stem the growth of inhuman practices across the world and it proposes positive measures to help us eradicate this scourge from the international scene.

As we commemorate the 39th anniversary of the Universal Declaration of Human Rights we applaud this important step.

Highest Court rules—Major victories

by D'Arcy Hoobin

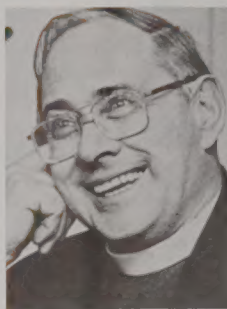
The Supreme Court of Canada has ruled that an employer may be held liable for acts of sexual harassment committed by a supervisor. The decision in *Robichaud v. Treasury Board* is strongly supportive of a broad and liberal interpretation of human rights legislation.

In 1980 Bonnie Robichaud filed a complaint of sexual harassment with the Canadian Human Rights Commission against her employer, the Department of National Defence. Ms. Robichaud alleged that it was her supervisor who had sexually harassed her. The supervisor was found to have sexually harassed Ms. Robichaud. The issue before the Supreme Court was whether the Department of National Defence could be held liable for the acts of sexual harassment committed by Ms. Robichaud's supervisor.

The Supreme Court found that Ms. Robichaud's employer was liable under the *Canadian Human Rights Act* for the acts of sexual harassment committed by Ms. Robichaud's supervisor. The Court held that the Act is concerned with the effects of discrimination rather than its causes or motivations. The remedies set out in the legislation would not be fully effective if not available against the employer, for only the employer can remedy undesirable effects and provide the most important remedy—a healthy work environment. The Court commented that the emphasis in the Act is on the prevention and elimination of undesirable conditions rather than on the punishment of wrongdoers. For the Act to achieve its purpose, the Human Rights Commission must be empowered to strike at the heart of

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Chairman's corner



A decade for dignity

What a decade! During the past 10 years as a commissioner and as chairman of the Ontario Human Rights Commission, I have given many speeches and interviews. A quote I have often used is from F.R. Scott, a person whose life was a remarkable testament to his vision of a Canada that exemplifies tolerance and social justice. The quote is 'If human rights and harmonious relations between cultures are forms of the beautiful, then the state is a work of art that is never finished.'

The struggle for human rights and basic freedoms is one that I have engaged in during my 35 years in the priesthood. I will continue with this struggle for many more years, because, as Scott also said, 'No citizen's right can be greater than that of the least protected group.'

My inspiration and source of strength for this struggle has been the concept of human dignity. The preamble to the Ontario *Human Rights Code*, taken in part from the Universal Declaration of Human Rights, begins 'Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...' Certain concepts remain unexamined and unexplained because we are all too busy to think and to reflect on what we are doing day by day.

Human dignity is one such concept, even though that is what our work is all about. Respect for human dignity, the right to dignity, treatment with dignity, the dignity of risk for people with a disability, and death with dignity are ideas and pious phrases that we use all the time. But what does dignity mean in today's society? The word 'dignity' traditionally alluded to the inherent nobility and worth that has been ascribed to the human species—Dignitas and Humanitas are really synonymous terms.

With this in mind, it has been my honour and privilege to try to carry out the mandate of the Ontario *Human Rights Code*, 'having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and is able to contribute fully to the development and well-being of the community and the Province.'

It has been an exciting decade, beginning in 1977 with a report on human rights entitled 'Life Together', published by the Ontario Human Rights Commission. It contained a serious admonition: 'Respect for human rights is an old tradition in Ontario, but it is a tradition that may be more fragile and vulnerable than we sometimes realize.' This proved to be very true as we fought and struggled for the passage of Bill-7 in 1981, which resulted in the major revision of the Code that was proclaimed law on our 20th anniversary on June 15, 1982—some six months after I became chairman. The greatly expanded protection, and particularly the protection of both mental and physical handicap, has resulted in handicap cases representing approximately 40 per cent of our complaints.

During 1982 and 1983 I travelled from one end of the province to the other giving speeches and interviews on the Code and its new expanded grounds. The end of 1983 saw the doubling of the caseloads of our already overworked and dedicated officers. I know of no other branch of government that has been expected to do more with fewer resources than the Human Rights Commission of Ontario.

The next major event of the decade was the *Charter of Rights and Freedoms* and the great expectations for human rights in Ontario stemming from the equality section of the Charter. This meant bringing our Code into compliance with the Charter, resulting in the new expanded Code of 1986. It is to my great sorrow and to the shame of the present government that access for people with a disability has yet to be proclaimed law.

As we celebrate the 39th anniversary this month and prepare for the 40th anniversary of the Universal Declaration of Human Rights, I am grateful for the opportunity to have travelled to the Soviet Union to visit Jewish Refuseniks with the present deputy premier, the Honourable Robert Nixon. This visit made a profound impression on me and confirmed my view that we live in a global village and that any diminution of human rights and dignity any place in the world diminishes the rights and dignity of us all.

It has been my privilege to serve during this past year as president of the Canadian Association of Statutory Human Rights Agencies. I want to pay tribute to the association members and to all the people of Canada who struggle for the rights and dignity of all our citizens. If I might single out one person, I would mention my colleague and friend, Mr. Gordon Fairweather. He has been an inspiration and a tireless fighter for the dignity of all people in Canada. I wish him every success in his new position as chairman of the Immigration and Refugee Board. He will be greatly missed on the Canadian Human Rights Commission. I also want to say

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thanks to all the commissioners who have served with me during the past 10 years. I wish to thank the commission staff, who work very hard and who need increased resources to fulfil their important mandate.

During the past 10 years it has been clear to me that discrimination is much more complicated and subtle than simply the misguided actions of individual bigots. Discrimination is rooted in attitudes and practices, intentional and unintentional, that result in disadvantage for whole groups of people, particularly racial groups, women, native people and persons with disabilities. It is my strongly held view that discrimination must be fought not only on a case-by-case basis but by attacking systemic discrimination through legislated employment equity. If we

truly aspire to equality of opportunity for ourselves and our next generation, we can ill afford not to enact such legislation.

In closing, I want to pay tribute to the government of Ontario for leading the way in Canada over the past 25 years. The Ontario Human Rights Commission looks forward to a continued tradition of progressive legislation because there is still much to be done. As Thomas Berger states in his important book *Fragile Freedoms*: 'Our diversity shouldn't terrify us: it should be our strength not our weakness—Along every seam in the Canadian mosaic unravelled by conflict, a binding thread of tolerance can be seen. I speak of tolerance not as mere indifference, but in its most positive aspect, as the expression of a profound belief in the virtues of diversity and in the right to dignity.'

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the problem to prevent its recurrence and to require that steps be taken to enhance the work environment.

Under the Ontario *Human Rights Code, 1981*, there are two ways by which an employer can be found liable for acts of sexual harassment committed by one of its employees. The first is where the acts of sexual harassment are committed by a supervisory person in the company or organization—an individual who is part of the 'directing mind' of the corporation. This is known as the organic theory of corporate responsibility.

The second way in which an employer may be held responsible for acts of sexual harassment is where the employer knew, or ought to have known, of the problem and failed to take adequate steps

to deal with it. An employer cannot absolve itself of responsibility by turning a blind eye to the problem of sexual harassment.

The decision in *Robichaud v. Treasury Board* is also significant for the comments expressed by the Supreme Court on the proper approach to human rights legislation. The Supreme Court again expressed the view (as it had done in earlier cases such as *Craton* and *O'Malley*) that human rights legislation must be given a liberal interpretation so as to advance the purposes of such legislation. This type of approach will assist the commission as it addresses the challenging issues before it, particularly those raised by the recent amendments to the Code.

D'Arcy Hoobin serves as legal counsel with the Ontario Human Rights Commission.

Amnesty International—A conspiracy of hope

Thousands of people are in prison because of their beliefs. Many are held without charge or trial. Torture and the death penalty are widespread. In many countries men, women and children have 'disappeared' after being taken into official custody. Still others have been put to death without any pretence of legality: selected and killed by governments and their agents.

These abuses—taking place in countries of widely differing ideologies—demand an international response. The protection of human rights is a universal responsibility, transcending the boundaries of nation, race and ideology. This is the fundamental belief upon which the work of Amnesty International is based.

What is Amnesty International?

Amnesty International is an independent worldwide movement. It plays a specific role in the international protection of human rights. Its activities focus strictly on prisoners:

- It seeks the **release of prisoners of conscience**. These are people detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, who have not used or advocated violence.
- It works for **fair and prompt trials for all political prisoners** and on behalf of such people detained without charge or trial.
- It opposes the **death penalty and torture** or other cruel, inhuman or degrading treatment or punishment of **all prisoners** without reservation.

Who Supports Amnesty International?

Amnesty International has an active worldwide membership. There are more than 500,000 members, subscribers and supporters in over 160 countries and territories. The movement is open to anyone who supports its goals. The members come from all walks of life, reflect a wide variety of viewpoints and



are encouraged to participate as fully as possible in Amnesty International's many activities.

How did Amnesty International begin?

Amnesty International began in 1961 with a newspaper article by British lawyer Peter Benenson. He urged people everywhere to begin working impartially and peacefully for the release of prisoners of conscience. Within a month more than a thousand people from various countries had sent in offers of practical help. They were ready to help collect information on cases, publicize them and approach governments. What started as a brief publicity effort became a growing international movement.

Is Amnesty International political?

Amnesty International is impartial. It does not support or oppose any government or political system. Nor does it necessarily support or oppose the views of the prisoners whose rights it seeks to protect. It

is concerned solely with the protection of the human rights involved in each case, regardless of the ideology of the government or the beliefs of the victims.

How does Amnesty International get its information?

Amnesty International attaches great importance to impartial and accurate reporting of facts. Its activities depend on meticulous research into allegations of human rights violations. The International Secretariat in London (with a staff of 150, comprising some 30 nationalities) has a Research Department which collects and analyses information from a wide variety of sources. These include hundreds of newspapers and journals, government bulletins, transcriptions of radio broadcasts, reports from lawyers and humanitarian organizations, as well as letters from prisoners and their families. Amnesty International also sends fact-finding missions for on-the-spot investigations and to observe

trials, meet prisoners and interview government officials. Amnesty International takes full responsibility for its published reports and if proved wrong on any point is prepared to issue a correction.

Where does Amnesty International get its money?

Amnesty International relies on donations from its members and supporters. Its financial independence is as vital to its work as its political independence. Its rules about accepting donations are strict and ensure that any funds received by any part of the organization do not affect its integrity, make it dependent on any donor or limit its freedom of activity. By far the greatest part of the movement's funds come from small, individual donations, from membership fees and local fund-raising drives. It does not seek or receive government money for its budget.

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